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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,990	07/11/2003	Michael D. Gandrud	P06591US0	4246
34082	7590	09/13/2005	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			LOPEZ, FRANK D	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/617,990	GANDRUD, MICHAEL D.	
	Examiner F. Daniel Lopez	Art Unit 3745	
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
THE REPLY FILED 31 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.			
<p>1. <input type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>			
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p>			
<p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p>			
<p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p>			
<p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p>			
<p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>			
<p>7. <input type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: <u>13-18</u>.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: <u>1-5 and 7-11</u>.</p> <p>Claim(s) withdrawn from consideration: _____.</p>			
<p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p>			
<p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p>			
<p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p>			
<p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u></p>			
<p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____</p>			
<p>13. <input type="checkbox"/> Other: _____</p>			
 F. Daniel Lopez Primary Examiner Art Unit: 3745			

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that Gollner discloses a digital computer that sends only a switch-on or switch-off output to a two position valve (21) and so the valve only permits a fully open or fully closed flow condition and does not provide proportionally regulating the flushing flow.

Applicant is partially mistaken. Gollner discloses that the "amount of hydraulic flow to be flushed out results from the switch-on time and the size of the orifice 22 (fig 3)...The switch-on time can be controlled as desired by means of the digital computer 1, i.e. from 0 to 100% of the time, by modulating the switch-on time and the switch-off time (column 5 line 10-16). Applicant's statement that the computer sends only a switch-on or switch-off output to a two position valve (21) and so the valve only permits a fully open or fully closed flow condition is clearly wrong. As discussed in Fluid Power Design Handbook, the use of switch-on time between 0 and 100% results in the valve having an effective condition anywhere between fully closed to fully open.

Applicant continues to argue that Fluid Power Design Handbook does not have the words "a proportional solenoid valve and a modulated on-off valves are functionally equivalent", and therefore they are not functionally equivalent. Applicant is mistaken. There are many statements in Fluid Power Design Handbook that indicates the equivalence of the proportional solenoid valve and a modulated on-off valves. For example, it states that the modulated on-off valves "establishes an average flow (or pressure build-up)" (page 82 paragraph 4) and that proportional solenoid valves "can adjust either flow or pressure" (page 82 paragraph 6). One of ordinary skill would recognize that this means they are functionally equivalent..